IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

APPEAL FROM ORDER NO.79 OF 2001

1. Mrs. Zilda Bras De Sa,

2. Mr. Arun Bras De Sa,

3. Mr. Rohit Bras De Sa,
   All major and residents
   of Cobrawaddo, Calangute,
   Bardez-Goa. ... Appellants.

versus

Mr. Vasudev Anant Kalangutkar,
since deceased represented by:

1(a). Mrs. Sunanda Kalangutkar,
married, resident of
Cobrawaddo, Calangute,
Bardez-Goa.

1(b). Mr. Devendra Kalangutkar,
major, married, resident
of Cobrawaddo, Calangute,
Bardez-Goa.

1(c). Mr. Laxmikant Naik,
major, married, resident
of Cobrawaddo, Calangute,
Bardez-Goa.

1(d). Mrs. Vidhya Devendra
Kalangutkar, major, married,
resident of Cobrawaddo,
Calangute, Bardez-Goa.

2. Mrs. Manju Kalangutkar,
major, married, resident of
E/6-22, Cobrawaddo,
Calangute, Bardez-Goa. ... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Amit Palekar, Advocate for the Appellants.

Mr. Sachin Desai, Advocate for the Respondent Nos.1(b), 1(d) and 2.

CORAM: P. V. HARDAS, J.

DATED: 1ST FEBRUARY,2002.

ORAL JUDGMENT

By consent, this Appeal is taken up for Final Hearing.

2. This Appeal is against an Order passed by the 1st Additional Civil Judge, Senior Division, Mapusa, in Civil Miscellaneous Application No.58/99/SR/I and Civil Miscellaneous Application No.57/99/SR/I in Special Civil Suit No.32/99/SR/I, pending on the file of the 1st Additional Civil Judge, Senior Division, Mapusa.

3. By the Order impugned in this Appeal, dated 24th September, 2001, the learned Trial Court had rejected both the Civil Miscellaneous Applications, referred to above, one of which was for the appointment of receiver and the other application was for temporary injunction.

4. Mr. S. G. Dessai, learned Senior Advocate with Mr. Amit Palekar, learned Advocate has submitted that at this stage, he is not pressing for the appointment of receiver. He, therefore, requests that the application for injunction be considered.

5. The learned Senior Advocate appearing for the Appellants has invited my attention to the Order of the learned Trial Court particularly to paragraph 3 of the

Order. He has submitted that the learned Trial Court has given three reasons for rejecting the application for temporary injunction. The first reason being that the Plaintiffs have not come to the Court with clean hands. For arriving at this conclusion, the learned Trial Court refers to the fact that the plaint consists of 32 paragraphs and is typed on 20 pages and the learned Trial Court feels that simple matter has been complicated. The second ground for rejecting the application for temporary injunction is that the Plaintiffs have not attached a sketch along with the plaint to point out the encroachment or the extentions which are alleged to have been carried out by the Respondents. The third reason which the Trial Court holds for rejecting the application for temporary injunction is that the three affidavits filed by the Plaintiffs were contradictory interse and were inconsistent even with Form I and XIV.

6. As far as the first ground for rejecting the application, it is seen that certainly, the plaint consists of 32 paragraphs and is typed on 20 pages. Verbose and repetitive pleadings are factors which hinder early disposal of cases. But a Court called upon to decide the applications, even if the pleadings are verbose and repetitive should not be deterred and must endeavour find out the true controversy. Verbose and

repetitive pleadings would not mean that the Plaintiffs have come to the Court with unclean hands. For sustaining a charge of the Plaintiffs having come to the Court with unclean hands, it is not enough if the pleadings are repetitive and verbose but the Plaintiffs have suppressed some material fact or documents which would be adverse to him. In the present case, the learned Trial Court does not refer to suppression of facts or documents. Merely because the pleadings are verbose and repetitive, the learned Trial Court was not justified in coming to the conclusion that the Plaintiffs have come with unclean hands.

7. In respect of the second ground, my attention has been drawn to the fact that the Plaintiffs had attached three sketches which are A, B and C. The said sketch has also been filed along with the Memo of Appeal in the present Appeal. The first sketch which is a survey plan shows the position as it was existing in the year 1988 and the second sketch which is a site plan also shows the encroachment from the year 1988 to 1990 and the third site plan shows the existing encroachment or additions carried out by the Defendants. The learned Trial Court was, therefore, not justified in coming to a conclusion that no sketch was appended to the application for temporary injunction. Perusal of the three sketch maps/survey plan clearly point out the

encroachment or the alterations which have been done since the year 1988. Those additions, encroachments or alterations are spelt out in the plaint and the averments in the plaint are reflected in these three sketches. There is no authentic challenge to the pleadings or to the documents in respect of the encroachments or additions. The learned Trial Court without attempting to verify from the pleadings and the documents has erroneously jumped to a conclusion that the sketch was not produced and thus, dismissed the injunction application on this ground also.

8. Coming to the third ground, with the assistance of the learned Advocates for the parties, I have perused the affidavits of three Plaintiffs.

9. Mr. Sachin Desai, the learned Advocate appearing for the Respondents has not been able to point out any inconsistency interse between the affidavits. The form I and XIV is also annexed by the Appellants/Original Plaintiffs along with the Memo of Appeal. The learned Advocate appearing for the Respondents has been unable to point out any inconsistency between the affidavits of the Plaintiffs and the contents of form I and XIV. The learned Trial Court has also taken this as a ground for rejecting the

application of the Plaintiffs that the affidavits are inconsistent with form I and XIV.

10. The relief of injunction is primarily a discretionary relief. A relief of injunction is not to be granted merely for the sake of asking by a party. The Court granting the relief or refusing the relief is expected to go to the pleadings and arrive at a finding whether the parties seeking injunction are entitled to that relief. The Order on the face of it should reflect an application of mind by the Court. The Court should not be swayed by extraneous considerations which are not germane for deciding the controversy involved. In the present case, it is apparent that the learned Trial Court has not taken into consideration either the sketch maps or the pleadings of the parties and has passed an Order rejecting the injunction application.

11. I have heard the learned Advocates appearing for the parties at length and after giving my anxious consideration to the pleadings of the parties and the documents which are made available to me, I am of the considered opinion that the injunction as prayed by the Plaintiffs deserves to be granted. The balance of convenience for restraining the Defendants lies heavily in favour of the Appellants/Plaintiffs.

12. In the result, therefore, the injunction application filed by the Plaintiffs i.e. Civil Miscellaneous Application No.57/99/SR/I is allowed in terms of prayer clauses (a) and (b).

13. The Order of the learned Trial Court in respect of Civil Miscellaneous Application No.58/99/SR/I is maintained while a part of the Order of the learned Trial Court in respect of Civil Miscellaneous Application No.57/99/SR/I is quashed and set aside. Civil Miscellaneous Application No.57/99/SR/I filed by the Plaintiffs is, therefore, allowed.

14. In the result, therefore, Appeal from Order No.79/2001 is partly allowed in the aforesaid terms with no order as to costs.

(P. V. HARDAS)
JUDGE